

HIGH COURT OF UTTARANCHAL AT NAINITAL
C-482 NO. 1016 of 2006

Nand Kishore Talwar
S/o Shri Jaganath,
R/o Shiv Dham, Near Cooperative Bank,
Chakrota Road, Police Station-Kotwali,
Saharanpur, District-Saharanpur (U.P.)
Proprietor-United Tea India,
Shiv Dham, Chakrota Road Saharanpur,
District-Saharanpur (U.P.) Applicant.

Vs.

1. State of Uttaranchal
2. Additional Sessions Judge/IIInd F.T.C. Haridwar.
3. Additional Chief Judicial Magistrate, Roorkee,
District-Haridwar Opp. Parties.

Hon'ble Rajesh Tandon, J.

Heard Sri Rajendra Singh, Mohd. Safdar & Pramod Tiwari, counsel for the applicant and A.G.A. for the State.

By the present application filed under Section 482 of the Code of Criminal Procedure, the applicant has prayed for quashing the criminal proceeding of Criminal complain Case No. 51 of 2004 Food Inspector Vs. Sushil & 4 others u/s 7/16 of Prevention of Food Adulteration Act, Police Station-G.R.P. Laksar, District-Haridwar and to quash the impugned order dated 09.05.2006 passed by the opposite party no. 2 in Criminal Revision No. 183 of 2004 Balaji Traders Vs. State & Others and impugned summoning order of cognizance dated 20.05.2004 passed by the opposite party no. 3 in Criminal Complaint Case

No. 51 of 2004 Food Inspector Vs. Sushil & four others U/s 7/16 of Prevention of Food Adulteration Act, Police Station – G.R.P., Laksar, District-Haridwar. Further prayer has been made for staying further proceeding of Criminal complaint case No. 51 of 2004 Food Inspector Vs. Sushil & 4 others U/s 7/16 of Prevention of Food Adulteration Act, Police Station – G.R.P. Laksar, District – Haridwar Pending in the court of Opposite party no. 3.

The applicant, who is the proprietor of the firm United Tea India, Shiv Dham, Chakrota Road, Saharanpur, District – Saharanpur (U.P.), has challenged the summoning order, which was passed to the following effect:-

20.5.04

न्यायालय रिक्त है। आज यह परिवाद खाद्य निरीक्षक के द्वारा अन्तर्गत धारा 7/16 P.F.A. Act में प्राप्त होकर आदेश हुआ। दर्ज रजिस्टर होवे। अभ्युक्त गण को द्वारा समन आदेश 19.6.04 के लिये तलब किया जावे।

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Addl. Chief Judicial Magistrate
Roorkee (Haridwar)”

Counsel for the applicant has relied upon the judgment of ***M/s Pepsi Food Ltd. & Another V. Special Judicial Magistrate & Ors 1997 (2) Supreme (Cr.) 498.*** Relevant observations are as under:

“22. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate

summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

In view of the aforesaid, since there has been no application of mind in passing the aforesaid order, the matter is remitted to the Chief Judicial Magistrate for passing order in accordance with law.

Application filed under Section 482 of the Code of Criminal Procedure is disposed of.

(Rajesh Tandon, J.)

12.12.2006

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